

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 17, 2003

IN RE:

**PETITION OF TENNESSEE AMERICAN
WATER COMPANY TO CHANGE AND
INCREASE CERTAIN RATES AND
CHARGES SO AS TO PERMIT IT TO
EARN A FAIR AND ADEQUATE RATE OF
RETURN ON ITS PROPERTY USED AND
USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS**

**DOCKET NO.
03-00118**

ORDER ON MARCH 12, 2003 STATUS CONFERENCE

This docket came before the Pre-Hearing Officer at a status conference on March 12, 2003 to dispose of petitions to intervene, set a procedural schedule, and hear any other issues raised by the parties.

On March 4, 2003, the Pre-Hearing Officer issued a notice setting a status conference for March 12, 2003. Pursuant to the notice, the status conference was scheduled to: 1) dispose of any outstanding petitions to intervene; 2) establish a procedural schedule; and 3) resolve any other pending matters. The Pre-Hearing Officer convened the status conference as noticed. The entities in attendance were as follows:

Tennessee American Water Company ("TAWC") – Dale Grimes, Esq. and George H. Masterson, Esq., Bass, Berry and Sims, PLC, 315 Deaderick Street, AmSouth Center Suite #2700, Nashville, Tennessee 37238-3001;

Consumer Advocate and Protection Division ("Consumer Advocate") – Vance Broemel, Esq. and Shilina B. Chatterjee, Esq., Office of the Attorney General, PO Box 20207, Nashville, Tennessee 37202;

Chattanooga Manufacturers Association ("CMA") – Henry Walker, Esq., Boulton, Cummings, Connors & Berry, PLC, 414 Union Street, Suite 1600,

Nashville, Tennessee 37219 and David C. Higney, Esq., Grant, Konvalinka & Harrison, P.C., 633 Chestnut Street, 9th Floor, Chattanooga, Tennessee 37450 (participating telephonically); and
City of Chattanooga, Tennessee ("Chattanooga") – Michael A. McMahan, Esq. and Phillip A. Noblett, Esq., Special Counsel, 801 Broad Street, Suite 400, Chattanooga, Tennessee 37402 (participating telephonically).

I. PETITIONS TO INTERVENE

The Consumer Advocate and Chattanooga each filed a petition to intervene on February 25, 2003. CMA filed a petition to intervene on February 26, 2003. Tennessee Code Annotated Section 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.¹

The Pre-Hearing Officer finds that the petitions were timely filed and substantiate that the movants' legal interests may be affected by this docket. No movant has requested any relief that would impair the interests of justice or the orderly and prompt conduct of this docket. Moreover, Tennessee American Water Company did not object to the petitions in writing or during the status conference. Therefore, pursuant to Tennessee Code Annotated Section 4-5-310(a), the petitions should be granted.

¹ Tenn. Code Ann. § 4-5-310(a) (1998).

II. PROCEDURAL SCHEDULE

The Pre-Hearing Officer initiated the discussion of the procedural schedule by providing the parties a proposed schedule, which would have permitted the panel to deliberate the issues in this docket prior to June 9, 2003.² Thereafter, the Pre-Hearing Officer recessed the status conference and the parties discussed the proposed schedule among themselves. Upon the recommencement of the status conference, the parties presented the following agreed to procedures and dates:

First Round of Discovery Requests	Wednesday, March 26, 2003
Objections to First Round of Discovery Requests	Monday, April 7, 2003
Proposed Protective Order	Wednesday, April 9, 2003
Motions to Compel	Friday, April 11, 2003
Responses to Motions to Compel and Responses to First Round of Discovery Requests	Wednesday, April 16, 2003
Second Round of Discovery Requests	Wednesday, April 23, 2003
Responses to Second Round of Discovery Requests	Wednesday, May 14, 2003
Intervenors' Direct Testimony	Monday, June 9, 2003
Rebuttal Testimony of all Parties	Monday, June 30, 2003
Hearing	Tuesday, July 8, 2003 and Wednesday, July 9, 2003

The Pre-Hearing Officer agreed to take these dates under advisement.

The Pre-Hearing Officer finds that the above procedural schedule should be slightly modified for the following reasons. First, the above schedule does not allow sufficient time for the Pre-Hearing Officer to issue an order on motions to compel, TAWC to comply with that order, and the intervenors to review any responses received from TAWC in compliance with the order before intervenors propound their second round of discovery requests. Second, the hearing dates of July 8 and 9, 2003 conflict with potential organizational commitments of the Authority and its directors insofar as those dates inhibit sufficient opportunity by the panel assigned to this docket to consult with advisory staff and deliberate the merits of all issues without unnecessarily

² During the March 3, 2003 Authority Conference, the panel assigned to this docket voted to suspend the tariff until June 9, 2003.

extending adjudication of this proceeding beyond the six month time frame.³ Therefore, the procedural schedule proposed by the parties is modified as follows:

First Round of Discovery Requests Wednesday, March 26, 2003
Objections to First Round of Discovery Requests Monday, April 7, 2003
Proposed Protective Order.....Wednesday, April 9, 2003
Motions to Compel.....Friday, April 11, 2003
Responses to Motions to Compel and
Responses to First Round of Discovery RequestsWednesday, April 16, 2003
Second Round of Discovery RequestsWednesday, April 30, 2003
Responses to Second Round of Discovery Requests Friday, May 9, 2003
Intervenors' Direct Testimony..... Friday, May 30, 2003
Rebuttal Testimony of all PartiesFriday, June 20, 2003
Hearing.....Monday, June 30, 2003 and Tuesday, July 1, 2003

In regard to the above schedule, all discovery requests and any objections thereto shall be proffered in good faith with an appreciation of the need to resolve this rate case by the end of the six month time period. This agency stands ready to resolve this docket in a timely manner upon the speedy resolution of discovery disputes between the parties.⁴

III. OTHER DISCOVERY CONCERNS

In addition to discussing dates, the Consumer Advocate requested that it be permitted to send more than the forty (40) discovery requests permitted by Authority Rule 1220-1-2-.11(5)(a), and TAWC expressed its concern over the possibility of the intervenors issuing duplicative requests. The Pre-Hearing Officer finds that the magnitude of TAWC's proposed increase and the potential affect thereof on consumer rates establishes good cause for permitting the Consumer Advocate to exceed forty discovery requests. Therefore, the Consumer Advocate should be permitted to issue up to eighty (80) discovery requests in the first round of discovery

³ Tennessee Code Annotated 65-5-203(b)(1) permits a public utility to place a rate increase into effect after six months upon notifying the Authority in writing of its intention to do so. Tenn. Code Ann. § 65-5-203(b)(1) (Supp.2002).

⁴ Tennessee Code Annotated 65-5-203(a) directs "that the authority shall give the investigation preference over other matters pending before it and shall decide the matter as speedily as possible." *Id.* § 65-5-203(a) (emphasis added).

and, absent the granting of a motion pursuant to Authority Rule 1220-1-2-.11(5)(a), forty (40) requests in the second round of discovery. Moreover, the intervenors are directed to work together to ensure that TAWC does not receive duplicative requests.

TAWC also expressed concern over the intervenors using the second round of discovery to request information unrelated to the responses received during the first round of discovery. The Consumer Advocate was the only intervenor that stated that it might need to issue discovery requests that could be construed as something other than follow-up requests. The Pre-Hearing Officer finds that the intervenors should be permitted to request information needed to prepare their direct case and, therefore, the scope of the discovery requests issued during the second round of discovery should not be limited.

IV. AUDIT AUTHORITY

During the status conference, the Consumer Advocate stated that it was unsure of whether it would perform an on-site audit of TAWC's books or if it has authority to do so. As a result of these statements, the Pre-Hearing Officer asked the Consumer Advocate to file a statement as to whether it has authority to conduct an on-site audit and whether it intends to perform such an audit. The statement should be filed by the Consumer Advocate by Wednesday, March 26, 2003.

V. LOCATION OF HEARING

At the conclusion of the status conference, CMA requested that the hearing in this docket be held in Chattanooga, Tennessee. Chattanooga echoed CMA's request. The Pre-Hearing Officer finds that in order to fully consider these requests and provide an opportunity for other parties to respond, any party that chooses to request that the hearing be held in Chattanooga should file a motion requesting such relief by Thursday, May 1, 2003.

IT IS THEREFORE ORDERED THAT:

1) The petitions to intervene filed by the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter, the Chattanooga Manufacturers Association, and the City of Chattanooga, Tennessee are granted. The intervenors may participate in this proceeding as their interests require and receive copies of any notices, orders or other documents filed herein.

2) The following procedural schedule is adopted:

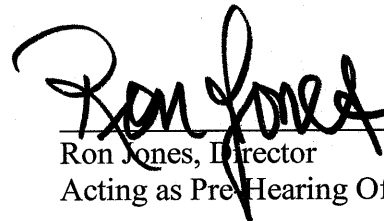
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Intervenors' Direct Testimony	Friday, May 30, 2003
Rebuttal Testimony of all Parties	Friday, June 20, 2003
Hearing	Monday, June 30, 2003 and Tuesday, July 1, 2003

All filings shall be filed in the Tennessee Regulatory Authority Docket Room by 2:00 p.m. on the specified date as provided for in Authority Rule 1220-1-1-.11. Testimony of witnesses shall be filed individually, separately paginated, and contain the caption of the case and docket number on the first page.

3) The Consumer Advocate shall be permitted to issue up to eighty (80) discovery requests in the first round of discovery and, absent the granting of a motion pursuant to Authority Rule 1220-1-2-.11(5)(a), forty (40) requests in the second round of discovery. Intervenors shall work together to ensure that TAWC does not receive duplicative requests. The scope of the discovery requests issued during the second round of discovery shall not be limited to requests seeking to follow-up on a response received during the first round of discovery.

4) The Consumer Advocate shall file by **Wednesday, March 26, 2003** a statement explaining whether it has authority to conduct an on-site audit of TAWC's books and whether it intends to perform such an audit.

5) Motions requesting that the hearing in this docket be held in Chattanooga, Tennessee shall be filed by **Thursday, May 1, 2003**.



Ron Jones, Director
Acting as Pre-Hearing Officer